Before the

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act	)	CC Docket No. 93-22 RM-7990
	)	

COMMENTS OF CONSUMER ACTION ON THE NOTICE OF PROPOSED RULE MAKING AND NOTICE OF INQUIRY

Consumer Action (CA) welcomes the opportunity to comment on the Federal Communications Commission's proposed rule making pursuant to the Telephone Disclosure Resolution Act of 1992 (Act).

CA is a 22-year-old San Francisco-based consumer education and advocacy organization that has long been active in representing consumers on telemarketing and 900 issues. We annually distribute more than one million pieces of consumer education material in eight languages through a national network of more than 1,250 community organizations and social service agencies to low income and limited-English-speaking consumers.

While we believe that the proposed rule will serve to protect consumers far more than is currently the case, we do recommend changes in several instances, as will be detailed below.

In our comments, I will follow the numbering system of the Notice of Proposed

could be provided six months to a year to migrate to one of the surviving numbers. After these proposed rules are adopted the carriers should be directed to stop issuing those numbers that are to be cancelled.

16. We strongly oppose the continuation of pay-per-call services on 700 numbers. There should be no area code or prefix that carries both free and pay-per-call services as defined under these proposed rules. The danger of confusion and abuse is far too great to permit this to continue.

17. CA agrees that interstate pay-per-call services should be limited to 900 numbers. There are enough possible numbers with a 900 area code to serve all current and potential pay-per-call services. Allowing such services on other numbers, such as 700, would lead to consumer confusion. CA also believes that the FCC should order long distance carriers to block all interstate calls trying to access intrastate pay-per-call services that are not on the 900 area code. Some carriers defeat the intent of 900 blocking by permitting interstate access to local pay-per-call services, such as those with the 976 prefix. Such practices should be prohibited. We firmly believe that any inconvenience caused in the short run, by reassigning all 700 pay-per-call services to 900 numbers, would be more than offset by long-term consumer benefits.

18. CA has found that establishing special prefixes for different types of pay-per-call programs is of limited value. In California, such a system does exist but the lines are so blurred that we do not think it provides any real service to the consumer. For example, the 844 prefix is designed for general education type programs, but it is also used by dating lines and soft-core adult services. As further indication that there is limited value in such a system, very few consumers in California have chosen to block access to just certain prefixes. Consumers either want access to all 900 lines or to none at all. We believe that, with the requirements that have been proposed for 900 advertising and preambles, little extra would be gained through a differentiated prefix system. In addition, we would oppose any preemption of the ability of states to determine which con-

sumer protections are needed for intrastate services. We find that the current system of having the prefix identify the carrier issuing the number is of great use. It permits consumer agencies to quickly identify which company is carrying a pay-per-call service that may be in violation of the law or the carrier's own standards. Losing this ability would greatly impede agencies' ability to help individual consumers and to protect consumer interests.

20. CA supports the proposed clarifying language to enlarge the prohibition on shutting off basic telephone service for non-payment of pay-per-call charges to also prevent any interruption short of final disconnection.

21. CA strongly opposes the use of collect calls to obtain payment for pay-per-call services. The only reason that vendors have moved to collect calls is to evade consumer protections have been placed on 900-based services. It defeats the ability of a residential or business telephone subscriber to block access to pay-per-call services. It defeats any sort of refund provision. It defeats attempts to regulate advertising and require preambles for pay-per-call services. In addition, it is extremely difficult for the local and long distance carriers who handle billing for such calls to determine what is a legitimate collect call and what is a pay-per-call billing for which service can't be disconnected. In essence, the issue here is the same as the migration of pay-per-call services to 700 numbers or 800 numbers. It is simply an attempt to evade 900 consumer protections and as such should be prohibited. Collect calls were not designed as a billing mechanism for pay-per-call services. This is why the 900 numbering system was set up. However, if the Commission does decide to permit collect calls for pay-per-call services then it should extend the prohibition against any disruption of local or long distance service for non-payment. We strongly support a prohibition on carrier billing for collect calls used for pay-per-call services, for the reasons cited above.

24. As noted in #18, CA has found in California that having the ability to only

often blurred. It is extremely difficult to educate consumers about the differences in each prefix. But most importantly, consumers either want access to all 900 numbers or to none at all. Despite the availability of selective blocking in California, virtually no consumers have opted for this option.

27. As noted in #18 and #24, we do not believe that such specific office code blocking is of value. Certainly, whatever limited value it might have would be more than offset by the loss of the ability to quickly identify the carrier that issued the 900 number to the information provider.

28. The Commission should defer to state blocking requirements if they are stronger than those imposed on the federal level.

30. CA is very concerned about the migration of pay-per-call services to 800 numbers. We strongly support the proposed rule that would prohibit such services unless charged to a credit card or when there is a pre-exisiting contractual arrangement that was established through a previous, unrelated phone call. Information providers must be prohibited from using ANI to bill for such calls, either on the phone bill or through a separate bill. We strongly urge that there be a prohibition against the use of 800 or other toll-free numbers to arrange for either an on-line collect call billing for pay-per-call types services or a subsequent call to arrange collect call billing for such services, for the reasons cited in #21. CA does not have an objection to: billing for pay-per-call services that are billed to a telephone calling card. It serves both as a credit card for telephone calls and indicates a preexisting contract for billing. However, if a calling card is used, the charges must be isolated from regular telephone call charges on the bill and the carrier must set forth procedures to prevent interuption of service for non-payment of such charges.

35. CA has two main points. First, we are concerned that the educational efforts set forth in the Act are either after the fact or limited to bill inserts—which studies have shown have very limited impact. For the most part, bill inserts are thrown away un-

read. We urge the Commission to issue a broad requirement that the carriers educate their customers on consumer rights and responsibilities related to the use of pay-per-call services. (The Commission directed AT&T to conduct such a campaign to educate their customers on how to use its services from public phones. CA believes that the program was effective.) Such a campaign should include: advertisements, direct mail and special efforts to make sure that the information reaches low income and limited-English-speaking customers. Second, it is important that any disclosure statement on consumer rights and responsibilities that would be contained in a bill insert or on the bill itself be standardized, using language set forth by the Commission. We also encourage the Commission to review the general carrier education programs to insure that the messages are clear and consistent.

36. As we noted in #30, we believe that the use of collect calls to bill for pay-per-call services should be prohibited. In our mind, the issue is not whether it is technically feasible but the best way to implement it. For example, the carriers could write in their contracts or tariffs that they are not providing billing for collect calls that are used for pay-per-call services and that if an OSP submits such charges for payment then the billing contract would be cancelled. Monitoring could be fairly simply done by setting up a screening and rejection system that would be geared to flag charges for collect calls that exceed certain per-minute or per-call limits.

37. The Commission should set forth a standard mandatory statement on the bottom of all 900 bill pages that would include these elements:

•A simple statement that (in effect) opens the door to complaints, alerting consumers to the fact that they can complain, first to their carrier and then to the information provider and then to the government.

•The name and address of the FCC and a mention of how to reach state utilities commissions with a standard required statement about complaints for people not satisfied by the response of their carrier.

•Information on the availability of blocking.

•Information on refunds.

•Information that service cannot be shut-off or interrupted for non-payment.

It is very important that pay-per-call charges appear on a separate page of the bill to avoid confusion on the part of the subscriber. There are different rules and requirements surrounding these charges, which justify their being placed on their own page. It is important that the classification of types of programs be done by the Commission and that the billing parties be required to use these standard terms. The terms should be clear and descriptive. The name of the information provider should also be on the bill. Consumers who have 900 complaints are often frustrated in their efforts to resolve them by not knowing the name of the information provider.

Consumer Action is quite concerned over the growing practice of secondary collection of 900 charges that have been removed from the bill by the carrier. If such charges have been removed for cause, such as first time unauthorized use or because the service was in violation of federal regulations, then secondary collection should not be permitted. Such secondary collection guts the consumer protections that have been enacted and makes the consumer who has already been victimized by the information provider subject to further victimization by collection agencies. We recommend that the Commission amend the proposed rules to prohibit secondary collection of pay-per-call charges that have been removed from the bill for cause. If this is not done then there should be disclosure on the bill that secondary collection may result if the charges are removed and that service cannot be interrupted for non-payment of pay-per-call charges left on the bill.

39. As noted in our response to #37, there must be no secondary collection of pay-per-call charges that have been forgiven or refunded after a determination that the program was conducted in violation of federal law or regulations. If there is secondary collection in these instances then this proposed rule will not have the value that it's in-

tended to have. This is one of the most important provisions of the proposed rule. Carriers must take responsibility to not collect charges for pay-per-call programs that are in violation of law or regulations. The carriers are in the best position to make such a determination because only they have access to advertising and program scripts. It is also appropriate that the carriers have in the tariffs and/or billing contracts language that requires the information providers and their billing agents to adhere to similar rules. Otherwise, the intent of the proposed rule will be weakened, as potential violators would have an incentive to migrate to alternative billing arrangements. We would expect, for the purpose of this rule. that carriers be required to insure that programs are in compliance with laws and regulations pertaining to the program, what is being offered or promised on it, and how the program is advertised. We would expect that the carriers track not just laws and regulations but court decisions at the state and federal level that deal with the advertising and content of the pay-per-call programs. In addition, a finding of non-compliance with federal regulations by a state attorney general should also be sufficient to establish a violation and initiate refunds.

40. CA recognizes the right of carriers and information providers to protect themselves from consumers who refuse to pay legitimate pay-per-call charges and who continue to make such calls. Protections against consumer abuse are in place in California and should provide a model for the Commission. The key word here is "legitimate." Consumers' access to 900 numbers should not be blocked as a result of their taking advantage of regulations that provide them with refunds for programs that violate federal laws and regulations. Here, too, it is important for the Commission to set forth specific language—such as the language found in the California regulations—to insure that the practices of the different carriers are consistent.

44. While CA does not have a position on which type of recovery mechanism should be utilized we do have several broader comments on the concept itself. Pay-per-call charges that are removed from the bill or refunded to the consumer should be

charged back to the information provider that handled the call. The investigation costs connected with such a refund should also be charged back to the information provider as well. All information providers should not have to share in the burden that results from programs that, for example, are in violation of federal laws. The carrier that makes such chargebacks must insure by either tariff or contract that the information provider does not institute secondary collection to recover lost revenue.

46. CA strongly supports this section of the rule. Specifically, the carrier should require proof of the non-profit status of the charity plus a copy of the contract between the information provider and the charity. Any advertisement for the program and the preamble itself should disclose what percent of the contribution will go to the charity. We agree that federal regulations should include language that any interstate solicitations must conform to the laws and regulations of all the states in which the solicitation may occur.

APPENDIX

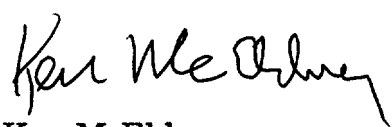
Sect. 64.1501. CA is concerned about two types of calls that may or may not have been considered when the definition was formulated. One is collect calls where the charge per-minute is in excess of what is normally charged for such collect calls. As such, CA holds that it would be covered by the definition as set in (a)(2) and be subject to all of the protections set forth in the Act, including that it only be provided over a 900 number. A second issue for us is the growing number of pay-per-call services that utilize an international call to the Caribbean, which is part of area code system also used in the United States. Consumers who see advertisements for such numbers are told that it is not a 900 service but that normal toll-charges may apply. This is deceptive in that the tolls would always apply and the actual per-minutes fees are far in excess of what would be expected for a domestic long distance call, which is what the consumer is led to believe is being made. CA would urge that programs that are accessed by international

call using an area code numbering system be considered pay-per-call services subject to the consumer protections spelled out in the proposed rule.

Sect. 64.1504. Sect. 64.1505. Consumer Action is concerned that the language in Sect. 64.1505 contradicts that in Sect. 64.1504. The clear intent of the proposed rule is to prohibit the use of collect calls for pay-per-call services. Such a use of collect calls is inherently deceptive and defeats the ability of the telephone subscriber to block pay-per-call services. The fact that a consumer takes affirmative action to accept the charge in no way solves the problem faced by private pay phones and businesses who are subject to collect call and pay-per-call consumer abuses. (Also see our discussion in response to question #21.) We urge that Sect. 64.1505 be deleted from the proposed rule, leaving Sect. 1504 as it is.

Comments pertaining to the other sections have already been covered above.

Respectfully submitted,



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April 16, 1993